

Hearing Date/Agenda Number
P.C. 04/14/2004 Item: 4.b.

File Number
CP03-067

Application Type
Conditional Use Permit

Council District 3

SNI University

Planning Area Central

Assessor's Parcel Number(s)
472-28-078

STAFF REPORT

PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: East side of South 9th Street approximately 200 feet northwesterly of East Reed Street (561 S. 9th Street)

Gross Acreage: 0.14

Net Acreage: 0.14

Net Density: n/a

Existing Zoning: R-M Multiple Residence

Existing Use: Residential Care Facility for six or fewer persons

Proposed Zoning: No change

Proposed Use: Residential Care Facility for 18 residents and up to 3 staff

GENERAL PLAN

Completed by: FLB

Land Use/Transportation Diagram Designation
High Density Residential (25 – 50 du/ac)

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: **FLB**

North: Two-family Residence

RM – Multiple Family Residential

East: Single-family Residence

RM – Multiple Family Residential

South: Two-family Residence

RM – Multiple Family Residential

West: Single-family Residence

RM – Multiple Family Residential

ENVIRONMENTAL STATUS

Completed by: FLB

☐ Environmental Impact Report found complete
☐ Negative Declaration
☐ Negative Declaration adopted on

[x] Exempt
[] Environmental Review Incomplete

FILE HISTORY

Completed by: **FLD**

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: F. Lee Butler

Department of Public Works – Attached

Other Departments and Agencies

None

GENERAL CORRESPONDENCE

Letters from the University Neighborhoods Coalition, the Campus Community Association, and the Santa Clara County District Attorney

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On November 7, 2003 the applicant, Marc Sabin, applied for a Conditional Use Permit requesting to increase the number of individuals in an existing residential care facility from six or fewer residents to 26 residents. Based on Building Code requirements establishing the minimum room square footage per resident, the applicant revised his proposal to request 18 residents. Up to three staff members at a time are proposed to work at the facility. The subject site is located at 561 S. 9th Street, on the east side of South 9th Street approximately 200 feet northwesterly of East Reed Street. A residential care facility for six or fewer residents is a permitted use in the R-M Multiple Residence District. However, to house more than six individuals, a Conditional Use Permit is required per Table 20-50 of the San Jose Municipal Code. No interior or exterior changes are proposed to the existing residence or detached garage. Prior to being occupied as a residential care facility for six or fewer residents, the structure was used as a single-family residence.

The existing two-story Greek Revival building was originally constructed circa 1870 as a single-family residence. The residence is listed in the City of San José Historic Resources Inventory as a contributing structure. Because no interior or exterior modifications are proposed to the residence, the historic status of the structure does not affect the review of the proposal.

provides a clean and sober living environment for men. A description of the program is attached and entitled “Project Ninety, Incorporated, Alcohol and Drug Program, Marc A. Sabin, Executive Director.” Currently, one staff member works with the residents at any given time, and the applicant is proposing to have up to three staff members present at any given time. No interior or exterior changes are proposed to the existing structures on site.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15303, New Construction or Conversion of Small Structures. Under this section, projects qualifying for exemption include those that involve construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. In this instance, the project qualifies under this exemption in that it proposes an increase in the number of residents at an existing residential care facility where no modifications are proposed to the exterior of the structure and where the single residence is permitted on the subject site.

GENERAL PLAN CONFORMANCE

The San José 2020 General Plan Land Use/Transportation Diagram designation of High Density Residential (25 – 50 du/ac) generally supports multi-family residential development. The General Plan states that “residential care and service facilities provide common sanitation facilities, but not necessarily dining/kitchen facilities, for persons occupying individual rooms either singly or in small groups. These residential uses are appropriate on lands designated Medium High Density Residential (12 – 25 du/ac) or on land designated for higher residential densities.” Using the “Population-Dwelling Unit Equivalency” Discretionary Alternate Use Policy, the number of residents should be divided by the average household size for San Jose, 3.08 persons per household. With 18 residents, the dwelling unit equivalent is 5.8 units.

At the subject 0.14 gross acre property, 5.8 units equates to 41.7 du/ac. Therefore, both the use and the proposed density conform with the San José 2020 General Plan Land Use/Transportation Diagram designation of High Density Residential (25 – 50 du/ac). Although the proposed project conforms with the property’s General Plan Land Use/Transportation Diagram designation, a residential care facility with between three (3) and 21 residents would also conform to the designation either through the “Population-Dwelling Unit Equivalency” Policy discussed above or through the below language that discusses developed parcels of less than two acres. The General Plan text states that “since parcels of two acres and less may be too small to be separately identified on a map of the scale of the official Land

Conformance with Zoning Ordinance Criteria

Per Table 20-50 of the San Jose Municipal Code, a residential care facility for seven or more persons requires approval of a Conditional Use Permit.

Table 20-190 of the Zoning Ordinance lists the parking requirement for a residential care facility. The Zoning Code requires one parking space per the first six client beds, plus one additional space for up to four client beds (or portion thereof) above the first six, plus one additional space for each additional four client beds (or portion thereof), plus one space for each employee or staff member. The Zoning Code states in Section 20.90.220 (C) that “a reduction in the required off-street parking for... residential care/service facilities... may be approved with a Development permit provided that such approval is based upon the findings in Subsection B of Section 20.90.200.” Subsection B of Section 20.90.200 is attached on page 21. The applicant wishes to utilize this potential reduction in the required parking in order to accommodate the proposed number of individuals, indicating (as shown in the attached operations plan) that none of the residents are allowed to have vehicles. The low parking ratio is indicative of the typical parking demand for the average residential care facility. The parking required for the subject facility is discussed below in more detail.

Without using the reduction applicable to residential care facilities from Section 20.90.220 C of the Municipal Code, a total of seven parking spaces would be required on-site based on 18 residents and three staff members. The plans show a total of five spaces on-site, however, the two spaces shown on the paved area between the residence and detached garage would impede on-site vehicular circulation. Cars in these spaces would impede the ingress and egress of vehicles to parking in the detached garage. Staff, therefore, does not support the use of this area for parking of vehicles. With the removal of these two spaces, the site would be left with the three parking spaces located within the existing detached garage. With three parking spaces, adherence to Table 20-190 of the Zoning Ordinance would limit the residential care facility to a maximum of 10 residents and one staff member. Alternatively, with three parking spaces, the facility could also operate in conformance with Table 20-190 of the Zoning Ordinance with up to six residents and two staff members.

The existing detached garage at the rear of the property was approved with a Building Permit (No. 00 054509) in 2000. Although the garage received this Building approval, the structure does not conform to two aspects of the Zoning Ordinance. First, the height of the structure is not in conformance. While the approved Building plans mirror those on file for this Conditional Use Permit in terms of height and roof structure, the roof was not constructed in conformance with these plans. The 22.5 foot high roof peak shown in the plans was cut off, and the overall height was reduced. The existing height still, however, slightly exceeds the maximum height of 12 feet at the midpoint of the roof slope. The second issue of non-conformance is the second level flooring which creates a half story. The approved Building permit shows

authority to authorize an exception for any new licensed residential care facility to locate within 300 feet of another licensed facility of like type. It has been the past policy and practice of the City of San Jose to not approve any exceptions to the separation requirement. Based on the most current records available to the Planning Divisions, no licensed facilities of any type are located within 300 feet of the proposed facility. Unlicensed facilities may be located within 300 feet of the proposed facility; the State's separation requirement is not applicable to unlicensed facilities and staff may not have a record of where these facilities are located.

PUBLIC OUTREACH

The applicants presented their proposal at the February 10th, 2004 University Neighborhoods Coalition (UNC) general meeting. At the meeting, the UNC voted unanimously to oppose the Conditional Use Permit for the expanded residential care facility. The motion to oppose was based on the existing overconcentration of residential care facilities within the University neighborhoods and on the belief that removal of owner occupied single-family residences in the area would not further the UNC's goal of improving their neighborhood. The University Neighborhoods Coalition has submitted a letter of opposition which is attached on page 23. The letter indicates that the proposal conflicts with the SNI Revitalization Plan, that the area is already unduly concentrated with licensed and unlicensed facilities, and that this overconcentration creates an "institutional neighborhood."

The subject site is located in an area that requires permits for on-street parking. At the UNC meeting, members of the community raised the issue of permit parking and requested that the applicants not obtain any on-street parking permits. To address neighborhood concerns related to parking, the applicant is amenable to not requesting any on-street parking permits from the Department of Transportation.

A separate letter from the Campus Community Association was also submitted in opposition to the proposed facility. The opposition was based on an overconcentration of facilities throughout the University Neighborhoods, and a copy of the letter has been included on page 24.

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the proposal with members of the public. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the Planning Commission agenda, on the Planning Divisions' website.

CONCLUSION

The proposed expansion of the existing residential care facility would need to utilize the parking reduction exception in 20.00.220 (C) of the San Jose Municipal Code. Staff feels that it would be more appropriate

structure, staff believes it is more important to address the issue regarding the (second level area) half story. Therefore, to assure that the area will be used solely for incidental storage, the plywood overlay, should be removed, leaving only the rafters. No stairs shall be constructed leading to the second level.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the proposed Conditional Use Permit, with the limitation that a maximum of 10 residents and one staff member be permitted and with the removal of the stairway and second level flooring in the detached garage, and include the following facts, findings, and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of High Density Residential (25 – 50 du/ac) on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the R-M Multiple Residence Zoning District.
3. Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The subject site is generally flat and rectangular in shape. Surrounding land uses include two-family residences to the north and south and single-family residences to the east and west.
5. The existing two-story Greek Revival building was originally constructed circa 1870 as a single-family residence. The residence is listed in the City of San José Historic Resources Inventory as a contributing structure. Because no interior or exterior modifications are proposed to the residence, the historic status of the structure does not affect the review of the proposal.
6. On November 7, 2003 the applicant, Marc Sabin, applied for a Conditional Use Permit requesting to increase the number of individuals in an existing residential care facility from six or fewer residents to 26 residents. Based on Building Code requirements establishing the minimum room square footage per resident, the applicant revised his proposal to request 18 residents. Up to three staff members at a time are proposed to work at the facility. The subject site is located at 561 S. 9th Street on the east side of

a single-family residence.

9. Parking for the proposed residential care facility is located in the rear detached three-car garage. Two additional parking spaces are proposed in the rear paved area that separates the detached garage and the residence.
10. Based on the most current records available to the Planning Divisions, no licensed residential care facilities of any type are located within 300 feet of the proposed facility.
11. The proposed expansion of the existing residential care facility does not meet all of the requirements of the Zoning Ordinance, particularly in relation to parking. A reduction in the number of residents to 10 and in the number of staff to one would bring the project into conformance with all parking requirements of Table 20-190 of the Zoning Ordinance.
12. The existing detached garage at the rear of the property was approved with a Building Permit (No. 00 054509) in 2000. Although the garage received this Building approval, the structure does not conform to two aspects of the Zoning Ordinance. First, the height of the structure is not in conformance. While the approved Building plans mirror those on file for this Conditional Use Permit in terms of height and roof structure, the roof was not constructed in conformance with these plans. The 22.5 foot high roof peak shown in the plans was cut off, and the overall height was reduced. The existing height still, however, slightly exceeds the maximum height of 12 feet at the midpoint of the roof slope. The second issue of non-conformance is the second level flooring which creates a half story. The approved Building permit shows stairs leading to the second level and shows plywood overlaying the rafters. Visits to the site confirmed that the stairs leading to that level were not constructed. The Zoning Code restricts accessory buildings to one story, and covering overhead rafters with plywood cannot be supported by either Planning or Building.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The San José 2020 General Plan Land Use/Transportation Diagram designation of High Density Residential (25 - 50 du/ac) generally supports multi-family residential development. The General Plan states that “residential care and service facilities provide common sanitation facilities, but not necessarily dining/kitchen facilities, for persons occupying individual rooms either singly or in small groups. These residential uses are appropriate on lands designated Medium High Density Residential (12 – 25 du/ac) or on land designated for higher residential densities.” With 10 residents, the use conforms to the General Plan Land Use/Transportation Diagram designation of High Density Residential (25 – 50 du/ac) in that the General Plan text states that “since parcels of two acres and less may be too small to be separately identified on a map of the scale of the official Land

environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15303, New Construction or Conversion of Small Structures. Under this section, projects qualifying for exemption include those that involve construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made to the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. In this instance, the project qualifies under this exemption in that it proposes an increase in the number of residents at an existing residential care facility where no modifications are proposed to the exterior of the structure and where the single residence is permitted on the subject site.

4. The proposed project is consistent with the State separation requirements applicable to new residential care facilities.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be signed, notarized, and returned to the Department of City Planning within 60 days from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Detached Garage.** The existing detached garage at the rear of the property is to be used only as explicitly allowed in Title 20 of the San Jose Municipal Code, particularly with reference to the definitions of accessory buildings in Section 20.200.020 and shall not contain living/habitable space. Stairs leading to the second level storage space in the detached garage shall not be constructed. Additionally, any permanent flooring (including plywood) installed on the second floor of the detached garage must be removed. The sliding doors shown as the entry for the most northerly of the three garage parking spaces must be converted to a standard roll-up garage door to accommodate vehicle access. Provide the Planning Divisions with a revised plan sheet reflecting the existing roof form and the aforementioned conditions.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

4. **Construction.** No interior or exterior construction is approved with this permit.
5. **Refuse/Trash Enclosure.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping. The applicant shall be responsible for removing any litter at the subject site. Unless otherwise authorized, the site shall be served by residential roll-away garbage and recycling cans. No dumpster is to be used at the subject property unless the applicant receives approval of a Permit Adjustment for a trash enclosure, subject to the discretion of the Director of Planning, Building, & Code Enforcement.
6. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
7. **Protection of Storm Drains.** No hazardous materials, paint, rinse water, or construction sediments or debris shall be allowed to enter the public right-of-way or any storm drain inlet.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
9. **Fire Department Comments.** The applicant is to comply with all Fire Department comments at the plan review stage.
10. **Building Comments.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit File Number, CP03-067, shall be printed on all construction plans submitted to the Building Division.
 - b. *Conformance Review.* A construction plan conformance review is required. Plans submitted to the Building Division shall be forwarded to the Planning Project Manager to ensure conformance with this approval.
11. **Public Works Comments.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-16656) to the satisfaction of the Director of Public Works:
 - a. *Storm Drainage, Sewer Fees.* In accordance with City ordinance, storm sewer area fees, sanitary sewer

gutter, and sidewalk along the project frontage. Repair, overlay, or reconstruction of asphalt may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

d. *Electrical.* Installation and/or relocation of electrolier(s) along project frontage may be required.

12. **Operations Plan.** Facility operations are to conform to the submitted plan, received in the Planning Divisions on January 7th, 2004 and entitled "Project Ninety, Incorporated, Alcohol and Drug Program, Marc A. Sabin, Executive Director," on file with the Department of Planning, Building, and Code Enforcement.
13. **Number of Residents/Staff.** The residential care facility shall be limited to a maximum of ten (10) residents, and one (1) staff member on site at any given time.
14. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
15. **Trees.** No trees are authorized for removal with this permit. No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade, shall be removed without a Tree Removal Permit issued by the Director of Planning.
16. **Parking.** On-site parking is to be used only for the subject residential care facility use and is to remain open and accessible at all times. No on-street parking permits are to be obtained for the subject facility to use.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two (2) years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the

is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.